

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 3/2/2021
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

TYRELL SMALL,

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF  
EDUCATION; VALERIE PAUL,

Defendants.

21-CV-1527 (GHW)

ORDER OF SERVICE

GREGORY H. WOODS, United States District Judge:

Plaintiff brings this *pro se* action under Title VII of the Civil Rights Act of 1964 and the New York State and City Human Rights Laws, alleging that his employer discriminated against him based on his perceived sexual orientation. By order dated February 25, 2021, the Court granted Plaintiff's request to proceed *in forma pauperis* ("IFP").

### DISCUSSION

#### A. Claims against the New York City Department of Education

Plaintiff's claims against the New York City Department of Education must be dismissed because an agency of the City of New York is not an entity that can be sued. N.Y. City Charter ch. 17, § 396 ("[A]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the city of New York and not in that of any agency, except where otherwise provided by law."); *Jenkins v. City of New York*, 478 F.3d 76, 93 n.19 (2d Cir. 2007); *see also Emerson v. City of New York*, 740 F. Supp. 2d 385, 396 (S.D.N.Y. 2010) ("[A] plaintiff is generally prohibited from suing a municipal agency.").

In light of Plaintiff's *pro se* status and clear intention to assert claims against the City of New York, the Court construes the complaint as asserting claims against the City of New York, and directs the Clerk of Court to amend the caption of this action to replace the New York City

Department of Education with the City of New York. *See* Fed. R. Civ. P. 21. This amendment is without prejudice to any defenses the City of New York may wish to assert.

**B. Service on Defendants**

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summonses and complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date the summonses are issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App’x 50, 52 (2d Cir. 2010) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m).”).

To allow Plaintiff to effect service on Defendants City of New York and Valerie Paul through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each of these defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

**CONCLUSION**

Plaintiff has consented to receive electronic service of Court filings. (ECF No. 2, at 8.) The Clerk of Court is directed to mail an information package to Plaintiff.

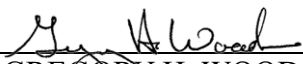
The Court dismisses Plaintiff's claims against the New York City Department of Education. *See* 28 U.S.C. § 1915(e)(2)(B)(ii). The Clerk of Court is directed to add the City of New York as a Defendant under Fed. R. Civ. P. 21.

The Clerk of Court is further instructed to issue summonses, complete the USM-285 forms with the addresses for the City of New York and Valerie Paul, and deliver to the U.S. Marshals Service all documents necessary to effect service on these defendants.

SO ORDERED.

Dated: March 2, 2021

New York, New York

  
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GREGORY H. WOODS  
United States District Judge

**DEFENDANTS AND SERVICE ADDRESSES**

1. City of New York  
100 Church Street  
New York, NY 10007
2. Valerie Paul  
297 Bedford Avenue  
Uniondale, NY 11553